

# APPROVED

## PLANNING BOARD MEETING

**MARCH 23, 2015 CITY HALL AUDITORIUM**

**62 FRIEND STREET, AMESBURY, MA.**

**MEETING CALLED TO ORDER AT 7:10 P.M.**

**PRESENT:** David Frick, Howard Dalton, Robert Laplante, Scott Mandeville, Ted Semesnyei, Lars Johannessen, Karen Solstad.

**ABSENT: N O N E.**

**ALSO PRESENT:** Nipun Jain, City Planner, Paul Bibaud, Recording Secretary

**MINUTES: 3-9-2015: Approved with the addition of the motion being seconded by Lars Johannessen, and approved by all.**

**SIGN APPLICATIONS: N O N E**

### **CONTINUED PUBLIC HEARINGS:**

**HATTERS APPLICATION FOR SPECIAL PERMITS (6), Phase II, 60 Merrimac, Street, PH: 12/8/14 - KS, HD, TS, DF, LJ.**

**Robert Laplante recuses himself.**

**Larry Smith, Managing Director of Hatters Point Capital, LLC:** We have our team here again tonight to answer questions you might have, but we have nothing more to present to you, we have submitted it all.

**David Frick:** I would think it's time to start putting the framework around the Order of Conditions that we would put on the permits. The first item I can think of is the removal and filling of earth, and issues around that that I think we're going to want. How are you putting the pilings in, the truck routes will be part of that, the testing of area foundations and monitoring that digging/piling process, the documentation of the houses being tested before and after, and plaster/windows as well as foundations. Also, there are retaining walls on the plan that say "to be designed by others," which is part of getting those approved for the sheeting.

**Nipun Jain:** For retaining walls, the final civil engineering drawings have to be designed and detailed, and the board requires those by issuance of a building permit. Once the applicant has their permits, they will go to the next phase of the project design, which is prepare the civil drawings, prepare all detailed construction drawings that are needed to get a building permit and construct the project, so it is part of that package, they will submit a detailed retaining wall design, whether it be the block retaining wall or the sheet pile retaining wall. Typically the board makes a condition on other projects that those detailed drawings be submitted to the board by their engineer and for confirmation from city staff. That is the sort of condition that would be put into a decision of the board. Any changes that would be made to the concept drawings are preliminary architectural drawings that have been provided would be finalized as the architect had explained that now they will start working on the detailed drawings and a final set will be provided, that you typically provide to the building inspector to verify that nothing has changed from the preliminary, in terms of building materials, design elements that were discussed. We have more detail on the drawings.

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**Lars Johannessen:** When Phase I was built, what was proposed to the PLB and design review was drastically different than what was constructed. I would just like to make sure that the PLB review the new drawings of the exterior to make sure that they agree with what we agreed with.

**Nipun Jain:** The removal of earth is the principal special permit. Two components to the project: site plan review and the special permits, at the last meeting, the PLB had closed the site plan review section of the project, and continued the special permit. There are 6 special permits associated with this project. You started to discuss the earth removal in which, during the public hearing, you began a discussion about the issues that you mention. A lot of the information provided has been to address the review criterias, but for example, the truck traffic routes, there was discussion that a final plan would be endorsed by public safety officials, once they have a better understanding of what sort of vehicles, what kind of construction, etc. So once the construction schedule is ironed out, that will be easier. So a condition, if the board was to put one condition on that, would be that the final truck routing plan be signed off on by the public safety officials, to ensure access along Merrimac Street for the neighborhood.

**David Frick:** I remember having a concern that right now, you don't think that you'd be on city land, but you are coming up very close to it. So in case you do, one of the conditions could be that if you do have to get on it, you would have to get a temporary construction easement. That should be part of the conditions.

**Nipun Jain:** The town owned wall was discussed, which encompasses public assets and public infrastructure, so an existing conditions snapshot will be prepared and if there is any damage repairs needed, then that would be made whole before the project is completed. That is a standard condition of your permits with regards to public infrastructure, which includes roads and ways in front and along the property. Those were the issues of the earth removal. The wetlands and flood plain special permit, the applicant provided the documentation for the review criteria under that special permit. There is one performance standard that relates to the approval by ConCom, and I believe they are close to wrapping that up. What PLB has done in the past is just include their approval by reference to satisfy the requirements. That is what staff recommends in this case, too, that in order to comply with the requirements of that, those conditions be included. That was the easy one. Then you have more than four units per structure. That is a special permit.

**David Frick:** It certainly makes sense to have more than four units per building here, but it is something of the thinking behind that, to justify the use of that.

**Nipun Jain:** The staff would definitely support that special permit, based upon A.: what exists on the site in terms of PHASE 1 B: the architectural design and details that have been provided for the proposed buildings as well as endorsement by the Amesbury Historical Commission on the proposed building design. Those are some other things that we would include in our recommendations, along with conditions that were suggested earlier with regards to the final drawings represented to confirm that those are the similar ones with the concept plans. Associated with that, the dimensional controls waiver, setbacks, lot area, and height would be included.

**David Frick:** Certainly from the setbacks and the lot area, that pertains to a lot of the same things we just talked about. That's how the structure was and where it was. The biggest issue here is the height, since it went about 6 feet higher. We've heard from the developer and architect about it, the additional height of the floors they have to have to

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make this feasible, the number of units, even though it is less than the other development, the mass of the building is a lot smaller, but the height is a little higher. It seems to me that we have a blighted spot there today, and this will have an impact on two adjacent buildings or homes. But what this project brings to the rest of the neighborhood is a huge improvement, and for the whole city of Amesbury. That is the justification I'd have that these changes make sense. But feel free to comment.

**Karen Solstad:** I'd prefer the building was a little shorter, but in the context of constraints to get this development moving forward, I would support the waivers.

**Nipun Jain:** So we will add the findings of the board in the final draft. Also, the lot area is a waiver. It's fair to say that the lot area is not being expanded or changed. The only other thing is not so much the historical but more the provision under the bylaw under Section 11, L that says you can use the historical buildings as the basis for greater density and to that affect, we recommend that the PLB consider that in light of several aspects that the proponent has proposed. 1: building design is being proposed and is compatible with Phase 1 as well as what was there and taking historical elements from the existing buildings and incorporating that into the building design. 2: A more sympathetic massing that goes with the current phase, as well as with the land, so they are more proportional, as it relates to the site. They're also providing more parking, which is easier to access vs. the prior approval, which required building a multi level garage. This is more surface parking and one level of parking. So with all the different architectural features proposed and amenities proposed and site improvements, we would suggest the PLB support that waiver as well, and issue the special permit. When we draft the final findings and conditions, we will incorporate the board's comments.

**Jack McIlhenny, attorney for project developer:** One point we made early on was the affordable housing requirement. We have some input from city council on that. We'd request that that unit be identified prior to issuance of building permits for the last units within the project.

**Nipun Jain:** We are discussing how to resolve that matter with the applicant at this time. There is a consideration for projects where there is only one unit. It is not so much providing the unit as an issue, it's the amount of bureaucratic paperwork with the state that is the bigger issue and burden on the proponent. We're looking at avenues to address that issue. There might be a way for PLB to address the issue from the regulatory perspective, as well as satisfy the applicant that they would not be overburdened by having to provide that.

**Jack McIlhenny:** The issue is simply that the way the map works out, we're required to provide a single unit within the project, and providing that single unit, the amount of regulatory approvals with the state, the auction, etc., seemed burdensome. So we'd like the opportunity to continue to work on that concept so we ask that it be required to be identified prior to issuance of building permits for our last phase.

**Nipun Jain:** Since there are 3 phases in the project, one of the first things that comes to mind is that that part of the requirement, we move to Phase III. So you can go ahead and start your first and second phase, and hopefully much before that, there will be another option available that you don't have to move and do that part of the project. So that is the initial discussion that we've had internally, to keep the project moving forward. So next meeting is April 13. I've spoken with the applicant's team, and they like the ideas of having a single decision that combines the site plan as well as the special permit findings

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and conditions. I started on the site plan, but we will finalize the draft with the discussion tonight, and have it for the board. If the board is okay with it, we will share the draft recommendations with the developer's team, so that they can provide input in advance of the next meeting so that we are ready. We'll keep the public hearing open.

**Motion was made by Lars Johannessen to continue this hearing to the April 13 meeting. Motion was seconded by Scott Mandeville. AIF with Robert Laplante recused.**

**Motion was made by Karen Solstad to start drafting conditions for approval of the special permits to go along with the site plan, consolidated into one document.**

**Motion was seconded by Howard Dalton. Vote was AIF with Robert Laplante recused.**

**Request to take an item out of order, under administrative, request for Endorsement of Final Plans: Locke Hill Subdivision, 56-58 South Hampton Road.** Draft documents and covenant with plans from applicant.

**Motion was made by Scott Mandeville to take this item out of order. Motion was seconded by Karen Solstad. AIF**

**Nipun Jain:** The plans are ready to be endorsed. There was a question regarding the covenant at the last meeting. We have since then received the final covenant document as the board requested. I have the original with me and the original with the signatures. The project has met all the conditions of the board's decision required prior to endorsement at this time.

**Motion to approve the endorsement of the plans and signing of the covenant was made by Ted Semesnyei. Motion was seconded by Scott Mandeville. AIF.**

**Motion to endorse the accompanying covenant for that subdivision was made by Ted Semesnyei. Motion was seconded by Lars Johannessen. AIF.**

### CLOSED PUBLIC HEARINGS:

**Shea Concrete Products, 87 + 89 Haverhill Road, Site Plan / Special Permit Map 74, lots 8, 7, 9 – PH: 10/27/14 - SM, KS, HD, TS, LJ, RL.**

**Nipun Jain:** At last meeting of PLB, the board had closed the hearing and requested the planning office to draft recommendations for this project. We have a document before you that is the set of recommendations for approving this project. This project requires a special permit and a site plan approval. I've shared this document with the applicant's representative and they are okay with the board moving forward, if that is the pleasure of the PLB. We have required that they provide the board with final architectural drawings that they would be preparing for the building permit application, so that the board can verify that it is the same building design. Those are the two primary aspects, as far as architectural design goes. The retaining walls, there was a detailed required which the applicant did provide with regards to cross sections, heights, and there is a condition that requires them to provide final engineering details. They are using the product that they make, so it won't be different material but we're looking for detailed civil drawings just to make sure it doesn't change the building layout or site design in any shape or form. The third thing was landscaping. There is a zoning bylaw requirement that states it requires 50 feet of continuous vegetated buffer along Haverhill Road. They will be providing the same amount of landscape quantity for that strategic location, which was

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identified as the entrance driveway, and in front of the parking area proposed in front of the office building. So that was incorporated into the decision. There is no lighting proposed by the applicant, but on the request of the PLB, they did provide one free standing light and some bollards. The free standing light is in the back. The bollards are in front of the office building. That also supports the waiver that they had requested from the photometric analysis because there is no other light, other than the one free standing in the back, which is set back on the hill so the light is not shining onto the property line, therefore it does meet the point of foot candles. There is a request for waiver from using granite curbing, which was discussed at a public hearing, and the board will allow them to use the concrete product for curbing, because it is a product that they make and this is not a public facility, so any maintenance issues will be addressed by the property owner. The third waiver is from the parking requirements. Under the zoning, the calculations for parking is 50, but they are providing 37 and the reason they believe 37 is sufficient is the number of employees will only increase to 3 or 4, which does not lead to a substantial number of trips generated from the new office building. They are consolidating offices located in various places on the site, making it more efficient. This is a contractor based business, with little to no customer traffic. Those are the highlights of the proposed project. There are two specific requirements that I'll mention here. One is the sediment erosion control bond and the performance bond. Sediment erosion control bond is to insure that there is no runoff onto Route 110 or to adjoining properties, which is required for any construction project. The performance bond is to make sure that the storm water system and other site improvements that the applicant has agreed to complete as per approved plans. Those are the conditions that go from project to project. The others are very similar that you have on other projects. Any plantings in landscaping shall survive two growing seasons as per final plans.

**Karen Solstad:** One change, under Section 5, on number 2: allowed uses: change that part about the hotel. Typo needs correcting to "office and storage buildings" only.

**Motion was made by Scott Mandeville to endorse this document with the changes discussed. Motion was seconded by Robert Laplante. AIF, but Mr. Dalton could not vote due to missing a meeting, so the vote was 6-0 to approve.**

### **Hatter's Point Development Plan, PHASE II, 60 Merrimac Street**

**PH: 11/10/14 - SM, KS, HD, TS, DF, LJ.**

**David Frick:** In essence, we've done the Hatters point Phase II earlier, so we are all done with this item.

### **Amesbury Heights, 40R, 36 Haverhill Road, Map 86, Lots 25 & 47**

**PH: 12/8/14 - KS,HD,TS,LJ,RL,DF**

**David Frick:** I understand you'd like this continued until our meeting on Apr. 13 ?

**Sean McReynolds, from Corcoran- Jennison:** Yes, we received the draft conditions today, but we'd like to work with PLB and planning department to submit our comments. We recognize that it has extensive draft conditions and we want to make sure it is appropriate to what we proposed.

**David Frick:** I believe there is a document for you to sign to allow us to continue to Apr. 13 due to time constraints?

**Sean McReynolds:** Yes. I can sign it. It just allows you guys to go out to Apr. 13.

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**Nipun Jain:** To clarify, Apr. 13 is the meeting. We will not be able to file it until the 15<sup>th</sup>. Also, given the extensive nature of this project, we're looking at a two step process: 1. have the comments back from the applicant on what some of the conditions that they would like to amend, and 2. maybe have a meeting with 1-2 members of the PLB so that they can wrap their heads around it as well. So when we do come to the board, all of the members are fairly comfortable with the decision as a whole. That's a lot of ground to cover, so that is my recommendation.

**David Frick:** I have travelling coming up, but I can do April 2.

**Sean McReynolds:** I'll be travelling too, but Apr. 2 works for me also.

**David Frick:** If you can get two people to do it before that, that's ok, I don't have to be there. Lars, can you do it?

**Lars Johannessen:** Yes.

**Nipun Jain:** So our goal has been that we will try to get all the comments from the applicant's team by the end of this week. That gives us a chance to respond to it, which brings us to the week of the 30<sup>th</sup> and then we will modify a draft and bring it to the attention of the board members and see when we can meet at the earliest, and if Lars is available (and Robert agrees to do it also). That's what we will do.

**David Frick:** Then I can jump in on Apr. 2.

**Nipun Jain:** So for tonight, I need that letter from Sean, and for the board to enter that letter into the record

**Sean McReynolds signs and submits his letter to the board, requesting the extending of approval out to the Apr. 13 meeting. This letter allows the board to file the final decision on or before Apr. 15, so at the next meeting, you will be able to vote on the final decision.**

**Motion was made by Lars Johannessen to accept this letter for the extension to the PLB to April 15. Motion was seconded by Robert Laplante. AIF.**

**Motion was made by Lars Johannessen to continue this closed hearing to Apr. 13. Motion was seconded by Robert Laplante. AIF.**

**National Grid, 39 + 39A Water Street, 33 Oakland Street, Lot 1B. Site Plan and (3)Special Permits – PH: 10/27/14 - SM, KS, HD, TS, LJ, RL**

**Motion was made by Robert Laplante to continue this item to the Apr. 13 meeting.**

**Motion was seconded by Howard Dalton. National Grid has requested that their agenda item be continued to Apr. 13 so that they can read through the draft. AIF.**

### ADMINISTRATIVE:

#### **Bill Payments:**

**Horsley-Witten Group, (Cumberland Farms – services rendered through 3-15-15 - \$125.00 Balance after payment: \$4,558.73**

**Motion was made by Robert Laplante for the board approve the payment of \$125.00 to Horsley-Witten for the Cumberland Farms project. Motion was seconded by Karen Solstad. AIF**

**Determination of Modification to existing Special Permit – 9 Water Street, Bldg. 2, Water Street Realty Trust – Attorney Paul Gagliardi**

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**David Frick:** We have material that was sent to us at our homes. The board should have the memo that came out, subject to determination of modification to existing special permit. Let the record show there is no one here in the audience to talk. I did research on this, and it was originally special permitted back in 1997. I tried to understand what are the real issues here and what is it we're trying to accomplish. So I asked staff if they could dig up the original site plan approval and special permit. It was to build offices on the second floor of the building that Dan Healey is in on Water Street across from the parking garage. The first thing would be did that special permit even cover the building we're talking about? If you look at the plan before us, if you remember, there is a big brick building and off to the left of it is a single story wood frame structure that is green. In the original special permit in plans that were submitted with that, this portion of the building isn't even in the documents for that. In addition, they only requested the second floor be turned into offices. They didn't even request the rest of the building, which I think has been done already. So in fairness to them so they can move this along, in their absence and not waste time if they want to request a public hearing, I think they really need to do a public hearing process and just submit this as a whole new project. Because as best I can see and I consulted Mr. Jain for help, this building isn't even in the special permit, it's not even the building that was considered.

**Karen Solstad:** So the special permit was for the long brick building, and it didn't cover this building or the other existing one story green wood building.

**David Frick:** So if the applicant were here or if they're not, I think the recommendation is the same. This isn't a minor or a major modification, it just really has to be a whole different thing, because it is not a modification of the original plan, it is a whole different building.

**Howard Dalton:** We'd have to give up our site plan approval rights to have them do this, and I don't think we want to do that. If you let it go as a minor modification, then they can just build it. If you want some control over it, then we should insist upon a site plan and the proper special permit.

**David Frick:** So we can't do it as an existing or a modification to the existing...

**Howard Dalton:** It's not a minor modification. Plus, with all the work about to happen down here, we want to make sure that we have some kind of idea of what they are going to do here, and what impact it will have on parking and everything else.

**Robert Laplante:** Nipun, isn't that part of the review process before it gets to the board? I mean, the actual applicant is applying for something that he actually controls and exists?

**David Frick:** I think the developer does ...

**Nipun Jain:** This application for consideration came before the board because the applicant is of the opinion that this is a modification to their existing special permit. So in 1997, when the application was made and approved, it wasn't clear what was being approved. At that time, unlike today's decisions, it used to be just one page, and it didn't give a very clear picture of what was being considered etc. So you had to look through the minutes, the file, and try to make sense of what the applicant was seeking, what was the deliberation, and how did the outcome come about. So we looked at it, and the applicant wanted to pursue, so we had no choice but to bring it before you, that if, indeed, it does incorporate the same building, and it is an extension of the prior permit, then it would at least be a modification to the special permit, and the board could consider this at

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that time, given the minutes of the proposal, if it's a major or a minor modification. So that is the purpose and the reason why this is before you tonight. After looking at the information which the board should look at, as well and we'll make copies, of their prior application and the supporting documents, it was a little difficult to see very clearly whether this portion of the building that they are proposing was included or not. But based on some of the information, where they stated in the 1997 permit, the second floor be converted for office use, and this portion of the building clearly does not have a second floor, it was questionable at best as to what was approved and what portion of the building was approved. Having said that, I think that lets assume that you do get this application as a formal permit and site plan application, what would it serve, if that's the way you go? 1. It would let all the abutters within 300 feet know that something is going to happen, they come and speak about the issues. There is no footprint addition or expansion being proposed, so everything is happening within the context of the urban space that exists, as far as the building is concerned. They are not making any changes on the site itself, nor is anything required. So if there is any impact, it's going to be probably as an outcome of the uses that go in the building itself, in terms of the number of cars, the users, and that may have an impact on the neighborhood. What is the neighborhood? The neighborhood is a commercial district. Yes, when this project was originally reviewed by the board, it was 18 years ago, and very different downtown from what it is today. The parking was more simple and now it is at a premium. So my point is that there are performance standards that you need to verify. In the whole scheme of things, if you're looking at a 120,000 square foot of gross floor area, what they are asking for is in the range of about 7000 to 8000 square feet in the total building that they are looking to add this use? It is not going to be a large or a significant change in that context. So if the goal of the board is to have the applicant respond to the performance standards under the regulation, then yes, that should absolutely be done. You may want to think about what purpose would be served by requiring a full public hearing on the special permit, because the use is not something that is not desirable. It's not incongruent with the central business district. It is an activity that you want to encourage because it brings people down, it brings customers, it supports the other businesses. So if the special permit is for the use, it is a use that you desire, in that building in that location. What that leaves is the other aspects: does it impact utilities, its not adding any significant number of uses that require any upgrade to any public infrastructure nor would it burden public infrastructure. Driveways would not be an issue. They are not creating any parking spaces. No storm water. No building and no change in the footprint. No erosion control. No action on the water, so no impact there. No changes to the building...not adding any windows or changing the character of the building.

**Robert Laplante:** This is supposed to be some kind of cross fit gym for people to work out. It's going to have an impact on traffic and parking with their customers, and it is already congested for parking. I don't think we should brush this off so easily.

**Nipun Jain:** That is the last piece I was going to talk about. It is probably the most important aspect that relates to one of the largest one owner building in downtown, who also happens to have one of the largest parking areas available. Probably not sufficient. But that is the sort of discussion you may want to have with the developer / property owner. You could say "this is great, it's a great use. However... for your own business or for your tenants, for it to be successful, do you have a game plan? Water Street is narrow.

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There is parking on one side, but have you thought about how we will make it that it is more alluring for people to come and use the facility?

**David Frick:** They're talking about not more than 50 people there at one time, because the classes are 15 to 25 people. But that could mean 50 cars, additional. These people would be using municipal parking. It's already full. What are our options in considering this?

**Nipun Jain:** So you have 1: to determine if this can be an extension of your prior permit, because of the circumstances of that a significant number of your performance standards and criteria are not changing. A few clearly need to be discussed and addressed, and that's okay. But does it require a new public hearing on a special permit. That's one.

**David Frick:** Can we even make it part of this other special permit, when it's not even the same building that was outlined in that?

**Nipun Jain:** From a purely legal and conservative point of view, maybe not. But if you look at what was the premise of the original special permit, and is this a new addition that came into being after that permit was granted? This whole structure has existed for all its time in recent memory. From that perspective, the urban space and the build out has not changed. So the visual impact, physical impact of the property itself is not as critical as the use part of the building, and that is what you really want some answers on, and how it will operate and function, so that not only the existing users, but the future users, can work with what is available there. From that perspective, you can extend that logic to say you can say its an extension of that special permit, even though the permit was being asked for a very specific part of that building.

**Howard Dalton:** I think it is more a question of principle. How long is the neighborhood in jeopardy without having any input of a special permit. If you don't use it for 2 years, it expires. So now we have a permit going on 18 years old, the whole neighborhood could've changed. All the circumstances that were voted on in '97 could not exist today. For me, it is more a question of principle. We don't want to burn up all the new parking that we'll need for the new Heritage Park.

**Robert Laplante:** I also hear you saying that this could be a precedent to for other similar things that could be lurking out there. So the permit is 18 years old. I never used it. It never happened.

**Karen Solstad:** To me, it feels like we need to do another application. Because it is a different use of the building, a more intensive use, even though there is a lot that isn't changing. But the intensive use with a lot of traffic and parking issues, we want to see businesses and uses that bring people to downtown, walking or driving. But 50 people could burn up all the municipal parking we have now. If we keep saying that anybody who's proposing a more intensive use that is within a certain distance to the parking garage can consider that their parking, then we're going to have a real problem.

**Lars Johannessen:** I would venture to guess that this would double the street traffic of that section of the road.

**Nipun Jain:** Well, Water Street will be widened based on the Heritage Park project, which is being built this summer. There will be improvement on the corridor. I think it might be helpful for staff to direct the applicant to perform on your request as to the key aspects that you'd like them to address in the application. They have the tenant lined up and they would like to move forward sooner than later, so if you can assist them in responding to the questions and concerns, I think they will be happy to do what is

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required of them to do. Based on the information that you have, based on some of the issues that you see, it would help me advise them on what you'd like to see on their application be addressed, rather than the whole A through Z requirements. If that is the case, so be it. But if we can help, good.

**Robert Laplante:** I think it would be helpful if we could see this place to help us grasp how it could work or not.

**Scott Mandeville:** Another thing to look at in talking about more intense uses, they've somewhere upwards of 5000 square feet in that facility, that would be 50 or so people for an office use, too. So we're not really talking about a more intense use if an office was to go in there, they'd have a similar number of people. If a restaurant were to go in there, they'd have more people than 50, so...

**Ted Semesnyei:** The traffic pattern would be different for an office building.

**Scott Mandeville:** It absolutely would, but as far as intensity of use, we're talking fairly similar amounts of people, and for a downtown area that we are proposing as a development area, exercise facilities fall into categories too, regarding zoning.

**Karen Solstad:** The application says that "both existing and proposed is 49,000 square feet."

**David Frick:** That's because the original permit was just for one floor, the second floor.

**Nipun Jain:** Let me present it this way: One is, this is a new application / new project, so it has to go through the review process. If it was a part of the original permit, what would be the board's determination? Would it be a minor or a major modification? If the whole footprint and the building was included? That is the key here. If you consider it minor, as it sounds like you'd lean towards, because if it's a major modification, it requires a public hearing.

**David Frick:** The bottom line is, we either have to suggest that they have to go through a public hearing process or not. If they do, you want us to say, "why don't we limit the scope of things."

**Nipun Jain:** I'm not trying to say limit the scope...

**David Frick:** It would make it easier for them, because you're right. They're using the same footprint, they are not going to require water, sewer, won't have to do all the stuff with ConCom and all that because nothing is changing. The real issues come down to: traffic, parking, and accessibility as well as the exterior changes that they plan to make.

**Lars Johannessen:** It also has to do with the fact that the application or granting of this application was in 1997?

**Nipun Jain:** No, because if a permit has been granted in an exercise, it stays and doesn't expire. So in your consideration, if you believe that circumstances have changed to such an extent, given the time and change in neighborhood character, that therefore it is not a minor change. So you'd make that determination and say "yes, it is the same permit, however, given various performance standards, requirements and changes in character of the neighborhood, it would rise to the level of a major modification, which is essentially saying "file again."

**Robert Laplante:** In my opinion, why don't we get some verifiable information, what exists, how long has it existed, etc.?

**David Frick:** We know it's been there a long time, it is not a new building. The original plan from 1997 did not site this piece of the property, it just sited the brick portion of the building, even though it was attached at the time.

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**Robert Laplante:** In my business, the first thing you had to do was verify that the person that was asking for it controlled it, owned it, leased it, did something with it.

**David Frick:** He did own and control this property, which was attached to that one, at the time of him asking for a special permit, but it did not show this building and reference that building in that request for a special permit. Even though he owned it all at both times, I would believe, this part was not part of that original special permit request. The other thing is that in reference to 100 square feet per person office, I can relate to that but, if the other one is 49,000, that would suggest that there is 490 people working in that building. There is not anywhere near that number. It might be 50. So I know what you're saying about a document saying 5,000 could be up to 50, but that's not realistic in this environment. It is not like New York City type office set up.

**Scott Mandeville:** That sort of square footage goes for anywhere, as far as zoning and loading is concerned. I'm not saying we necessarily would, but it is how it goes.

**Karen Solstad:** Are these properties, the brick building and the two wood buildings, are they separate or were they separate addresses at the time of the application, or were they separate properties?

**Nipun Jain:** They have always been separate buildings but I have no documentation, because we never asked for deeds and looking at which building was on which lot, we look at property ownership and our assessors database says these properties are: separate parcels, separate buildings, what do they qualify these properties as? They've always been under the same ownership criteria. Even if they have been on different properties, meaning different parcels, by deed, for ownership point of view, they are considered as one building. If I was to do it in my world, as a professional, I would label each of these buildings separately, so that it is easier to identify which building we're talking about, therefore which units are we talking about. Its easier to identify for maintenance, building, construction, reconstruction and what not.

**Karen Solstad:** And if you have a tenant in there, do these people traditionally get their mail at 21 Water Street for the main building and 23 Water Street?

**Nipun Jain:** There is a mailing address, which is 21, but in our records, 21 is actually part of 9 Water Street, in the city's data base.\

**Ted Semesnyei:** It seems like the PLB would want a site plan review, but you'd want to make it as easy as possible. I guess that's the best middle ground we could do. It seems like there is too much uncertainty and too many questions from PLB members.

**Lars Johannessen:** I think you need to look at the plan that was approved in 1997.

**Motion was made by Howard Dalton that we determine that this is not a minor modification.**

**David Frick:** This is the plan that was submitted in 1997. As you can see, it is only showing the brick building and only the second floor of that brick building.

**Karen Solstad:** The second floor plan, on the left, Plant 1.

(five voices all speaking at once)

**Scott Mandeville: I second Howard's motion.**

**Robert Laplante:** Discussion: I'm leaning toward that, but I don't think we have enough information right now to make a determination of this.

**Howard Dalton:** Just look what we did with the soccer school, the dance school...we put those people through hell,, yet they're way out on Hunt Road in areas where there is plenty of parking, mature buildings, etc. No change to the building exteriors at all.

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**David Frick:** If the applicant had come in and we asked how can the PLB justify this, show us how this was done and the permit you had, and I know they want to move forward as soon as possible, so I think in his best interest, to let them know they really have to come forward with a public hearing. So let's vote on the motion that it is not a minor modification. **Vote was unanimous that it is not a minor modification.** Now: is it a major modification or just a whole new project? What's the difference?

**Karen Solstad:** The difference is that the special permit seems to detail a very constrained part of the building.

**Howard Dalton:** Basically, they've got to come under today's rules, which makes it a new project. We can't take 1997 and apply it today where we determine it is a minor modification. It is not a minor modification today.

**David Frick:** In my view, I am all for it, but this is for a second floor, it's not even the same building, it didn't show the whole building in the permit, so it is really hard to justify.

**Nipun Jain:** I think everybody gets what they want needs to be done to move this thing in the right direction as fast as possible. I'd just like to suggest that, given that David is here and here for a few more days before he leaves, if we can set up a meeting with attorney Paul Gagliardi, in a day or two, so that David can explain, from the PLB's perspective, what they would like to see in the application so that we can put it on the docket, get it done, they can explain and do all the leg work in writing to the PLB, then we can move forward, one way or the other. The reason I brought it up tonight was, if this was the fork in the road, whether it gets considered a minor or major modification, Answers would still need to be provided. But if minor, it would just not require a public hearing. Now that we know it requires a public hearing, we're still getting to April 13, and if the applicant is able to satisfy the board, and satisfy the criteria, we come back to the same end point. It's just how we get there.

**Scott Mandeville:** I think if this proposal was for the second floor of the adjacent building, it probably would've gone through. It would've been a minor modification, different floor, adjacent structure of a connected building.

**Howard Dalton:** The ball is in his (Paul's) court. He's got time to advertise for the 13<sup>th</sup> as long as he doesn't kick up a fuss. We already have the special permit application, they can post it and include site plan in it and not as the PLB has required that it receive an application of site plan as well. So if you can make it happen for April 13, great. If not, it'll be in the following meeting.

**David Frick:** So when I speak at this meeting, you want me to specify: any exterior changes to the building, traffic, accessibility, parking, and how many units, since currently it is only one unit. Basically what Mr. Laplante brought up, being current uses, proposed uses and breakdowns so there is a good understanding of what we'll see. Lets verify.

**Nipun Jain:** Another suggestion that I made to the applicant was, if you really want to be able to use the whole building, or a combination of buildings, why don't they create a master plan? Then you can say, at this time, based on the potential building gross floor area, I see potential use of these many units and these kinds of uses. Now, the board can approve a master plan but it is always preliminary, because it is a master plan. ( 3-4 voices speaking amongst neighbors) Once you get to the point where more final details of

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the uses and the users, then you come back and it is a more focused discussion. That is what I'd recommend if I was in there in 1997.

**Howard Dalton:** Well, this looks like he already has a tenant, so he probably ought to be advised to do the whole building now, rather than come back with a minor modification, where he's got to advertise it anyway.

**Nipun Jain:** OK, I've got my marching orders. Thank you.

**Nipun Jain:** Before we adjourn and move on to the Executive Session, I have a couple items to go over while I pass out to you the information, and things needing signatures.

### **REQUEST FOR ENDORSEMENT OF FINAL PLANS:**

**LOCKE HILL SUBDIVISION, 56-58 SOUTH HAMPTON ROAD. DRAFT DOCUMENTS AND COVENANT WITH PLANS FROM APPLICANT APPROVED BY PLB UNANIMOUSLY.**

**BILL PAYMENT: HORSLEY-WITTEN GROUP FOR CUMBERLAND FARMS WORK DONE THROUGH 3-15-15 OF \$125 IS UNANIMOUSLY APPROVED. That leaves a balance of \$4,558.73**

**Motion to close the meeting was made by Lars Johannessen. Motion was seconded by Scott Mandeville. Vote was unanimous.**

**Meeting was adjourned at 8:40 P.M.**